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*Attorneys for Frank Avellino, et al.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Pro. No. 08-01789 (SMB)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

(Substantively Consolidated)

Defendant.

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In re:

BERNARD L. MADOFF,

Debtor.

-----x

**NOTICE OF REQUEST TO DEPOSE BERNARD L. MADOFF**

Defendants in Adversary Proceeding No. 10-05421 (SMB)<sup>1</sup>, pursuant to Plaintiff's Notice to Defendants, served July 22, 2016 and the Court's July 20, 2016 directive, seek permission to depose Barnard L. Madoff, and in support thereof, state as follows:

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<sup>1</sup> A list of the Defendants in the adversary proceeding referenced above is attached as Exhibit "A".

- (i) Defendants who seek permission to depose Bernard Madoff in Adversary Proceeding 08-1789 (SAB) are identified in Exhibit A attached hereto;
- (ii) The specific areas of inquiry for the deposition are as follows:
  - a) SEC enforcement proceedings against A&B and the Trustee's allegations of BLMIS's alleged fraud and creation of fake IA account and altering A&B documents, including bank records to cover alleged shortfalls. Amended Complaint, ¶¶ 126-169; Judge Bernstein's Memorandum Decision, dated July 21, 2016 in *Picard v. Avellino*, Adv. Proc. No. 10-05421 (SMB), pp. 9-11 (the "Memorandum Decision");
  - b) Trustee's allegation that Avellino and Bienes and certain associates negotiated a guaranteed annual rate of return with Madoff. Amended Complaint, ¶¶ 209-10, 212-214; Memorandum Decision, pp. 13-14;
  - c) The facts alleged in the Amended Complaint, including, but not limited to the "Red Flags" identified by the Trustee that purportedly establish Avellino, Bienes and Tom Avellino's actual knowledge or willful blindness of Madoff's Ponzi scheme. Amended Complaint, ¶¶ 251, 255, 262, 267-70, 252-54, 256-61, 275-79, 281-85, 287-91;
  - d) The Trustee's allegations in the Amended Complaint that Avellino, Bienes and Tom Avellino had actual knowledge that Madoff's business was not actually engaging in securities transactions, and was a fraud, including but not limited to the allegations related to the guaranteed rates of return and the so called "Schupt Process". Amended Complaint, ¶¶ 208-242.
- iii) The aforestated areas of inquiry are relevant in this adversary proceeding because actual knowledge of, or willful blindness to, Madoff's Ponzi scheme by Avellino, Bienes and

Tom Ayellino is a critical issue as to what the Trustee may recover from such defendants, as well as all subsequent transferees, both as to the safe harbor provision of 11 U.S.C. §546(e) and the "good faith" provision of 11 U.S.C. §548(c). See, Memorandum Decision, p. 40. The Trustee alleges that such actual knowledge is imputed to the other defendants through partnership and agency law and an alter ego theory. Memorandum Decision, pp. 44, 48-49.

Madoff has firsthand knowledge of the facts underlying the foregoing allegations and has previously testified under oath that defendants had no knowledge of the Ponzi scheme.

Respectfully submitted,

/s/ Gary A. Woodfield  
Gary A. Woodfield  
*Counsel for Defendants listed on attached Exhibit A*  
Florida Bar No. 0563102  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of August, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties via transmission of Notice of Electronic filing generated by CM/ECF.

/s/ Gary A. Woodfield

Gary A. Woodfield  
Florida Bar No. 0563102

EXHIBIT A

LIST OF DEFENDANTS REPRESENTED  
BY GARY A. WOODFIELD

Frank J. Avellino

Michael S. Bienes

Nancy C. Avellino

Dianne K. Bienes

Thomas G. Avellino

Avellino & Bienes

Avellino Family Trust

Avellino & Bienes Pension Plan Trust

Grosvenor Partners, Ltd.

Mayfair Ventures, G.P.

Aster Associates

St. James Associates

Strattham Partners

Kenn Jordan Associates

Ascent, Inc.

Mayfair Bookkeeping Services, Inc.

Frank J. Avellino Revocable Trust Number One as amended and restated January 26, 1990, as amended

Frank J. Avellino Grantor Retained Annuity Trust under Agreement dated June 24, 1992

Frank J. Avellino Grantor Retained Annuity Trust Agreement Number 2 under Agreement dated June 24, 1992

Frank J. Avellino Revocable Trust Number One under the Declaration of Trust Number One  
dated June 10, 1988

Nancy Carroll Avellino Revocable Trust under the Trust Agreement dated May 18, 1992

27 Cliff, LLC

Avellino Family Foundation, Inc.

Rachel A. Rosenthal

Rachel Anne Rosenthal Trust U/A dated June 29, 1990

Rachel Anne Rosenthal Trust #3

Heather C. Lowles

Heather Carroll Lowles Trust U/A dated June 29, 1990

Tiffany Joy Lowles Trust U/A dated June 29, 1990

Melanie A. Lowles

Melanie Ann Lowles Trust U/A dated June 29, 1990

Taylor Ashley McEvoy Trust U/A dated June 24, 1992

Madison Alyssa McEvoy Trust U/A dated June 29, 1990

A minor with the initials S.A.

S.A. Grantor Retained Annuity Trust